

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

CASEY WHITE AND KAREN DAVIS-WHITE,

Plaintiffs,

Civil No. 03-71610

Hon. John Feikens

v.

OTIS ELEVATOR CORP.,

Defendant.

---

**OPINION AND ORDER**

Plaintiffs originally filed suit against Otis Elevator for personal injury in the Wayne County Circuit Court, but defendant removed the case to the United States District Court for the Eastern District of Michigan on April 24, 2003. The basis for the district court's subject matter jurisdiction was diversity jurisdiction pursuant to 28 U.S.C. § 1332. The minimum amount that must be in controversy in order to remain in federal court is \$75,000.00. 28 U.S.C. § 1332.

The amount originally pleaded in the complaint controls the amount in controversy requirement. See, e.g., Jones v. Knox Exploration Corp., 2 F.3d 181, 182-83 (6th Cir. 1993). In the complaint, plaintiffs seek a judgment of “damages in whatever amount in excess of [\$25,000.00] they are deemed to be entitled” for counts of negligence, breach of warranty, and loss of consortium. Plaintiffs allege the following

injuries to Mr. White: a severe and permanent sprain of the right ankle, permanent tarsal tunnel syndrome, and permanent (unspecified) injury to his nervous system. Plaintiffs allege that the injuries do not allow Mr. White to work at full capacity and therefore he suffered a loss of income, and that the injuries resulted in a loss of consortium for plaintiffs.

In the notice of removal, defendant alleges that “the amount in controversy may exceed \$75,000” for these injuries. Notice of Removal, ¶5. When, as here, plaintiffs do not specify an amount of damages, a defendant seeking to remove an action to federal court bears the burden of showing, by a preponderance of the evidence, that the amount in controversy requirement has been satisfied. Gafford v. Gen. Elec. Co., 997 F.2d 150 (6<sup>th</sup> Cir. 1992). The burden of alleging jurisdiction cannot be met by alleging conclusorily that the plaintiff’s claim exceeds the jurisdictional amount; evidence must be produced that establishes the actual amount in controversy more likely than not exceeds the jurisdictional amount. Id.; Garza v. Bettcher Indus., Inc., 752 F.Supp. 753, 755 (E.D. Mich. 1990).

Here, on a case that appears to center around injuries to one plaintiff’s foot and ankle, defendant has not offered any evidence that the amount in controversy will exceed \$75,000. This case is therefore REMANDED to the Circuit Court of Wayne County, Michigan.

**IT IS SO ORDERED.**

---

John Feikens  
United States District Judge

Date: December 5, 2003